

In addition to eliminating the need for collocation of line cards, the NGDLC UNE platform also eliminates Ameritech's concerns regarding some of the Commission's earlier specific unbundling requirements. Specifically, the Commission would not need to decide whether the copper sub-loop from the RT to the NID and the copper sub-loop from the RT to the serving area interface SAI") are technically feasible sub-loops. Ameritech Ex. 4.0 at 39.

In filing its direct testimony to this proceeding, Ameritech did not propose these specific UNE offerings. Rather, Ameritech proposed two distinct broadband wholesale offerings over its Project Pronto architecture. The first offering is an end-to-end service that provides only a data path from the end user's premises to the CLECs collocation cage. This service can be optionally offered over a line sharing arrangement when the end user customer also receives voice services from Ameritech. The second offering is an end-to-end service that provides the aforementioned data path as well as a voice path to the collocation cage.

Although Ameritech did introduce its broadband service offering in this proceeding, and provided cost support for the offering, it nonetheless has not proposed final rates or illustrative tariffs for the offering. In fact, it appears Ameritech is not recommending that this offering be ordered through the rehearing process.

4. Ameritech's Surreply

On September 10, 2001, Ameritech filed a document styled as a Motion to File Instantly a Surreply to Staff's Reply Brief on Exceptions. Attached to the Motion were the proposed Surreply and a copy of testimony filed by WorldCom in a line sharing proceeding in California. The Surreply argues that Ameritech would be prejudiced by the adoption of Staff's proposed tariff language because it was attached to Staff's Reply to Exceptions and Ameritech was not afforded the opportunity of responding to the changes that Staff proposed to tariff language that was originally proposed in the Joint CLECs Initial Brief on Exceptions. The Surreply goes on to argue that a number of Staff's proposals are inconsistent with positions taken by Staff during the case in chief, inconsistent with findings contained in the proposed order and otherwise unwarranted.

Specifically, Ameritech objects to the following:

1) By requiring Ameritech to provide access to lit fiber, the tariff goes beyond the order which rejected unbundling new UNEs as opposed to an end-to-end UNE approach. (Section 10 of the proposed tariff)

2) Sections 9.5 and 9.7 (which address the provisioning of new equipment as it becomes available) do not address issues of economic infeasibility, despite the fact that Staff indicated during the hearing that economic issues should be considered.

3) The requirement that Ameritech provide CBR at rates greater than 96 kbps was not recommended by Staff during the hearings and is not contained in the Texas arbitration order that supposedly forms the basis of Staff's tariff. (Section 7.7.2)

4) The tariff orders the unbundling of packet switching, despite the fact that this is not required by the Order. (Section 4.1)

5) The tariff orders access to back office systems, despite the fact that the order does not require it. (Section 16)

6) The tariff contains pricing terms that were only introduced into evidence in response to questions propounded by Commissioner Squires and which, by agreement of the parties, were not to be resolved until later. (Section 18.5)

7) The tariff requires the provisioning of interoffice transport in combination with the end-to-end unbundled broadband UNE, which was not proposed by any party during the evidentiary portion of the case. (Sections 5.5.1 and 8.7)

8) The tariff requires an audit of back office OSS systems that would be redundant to the audit purportedly conducted following the entry of the Commission's arbitration decision in Dockets 00-0312/0313. (Section 16.3)

Both Staff and the Joint CLECs filed responsive pleadings. Both oppose the filing of the Motion in the first instance as outside the rules for pleadings contained in the Commission's Rules of Practice and the schedule of pleadings established by the ALJ in this docket. Both parties also reply to various arguments made by Ameritech in its Surreply. Ameritech filed a Reply. The Commission granted Ameritech's Motion to File Instantly and has considered the arguments raised in all of the additional pleadings in reaching the results herein.

Staff's response notes that the proposed tariff should be modified in certain instances. Staff would delete the last sentence of Section 4.1, which would address concerns relating to the unbundling of packet switching. Staff would delete Section 5.5.1 and 8.7, which would address concerns relating to providing interoffice transport in conjunction with the broadband UNE. Staff would add language to Sections 7.7.2, 9.5 and 9.7, recognizing that issues of economic infeasibility are also of concern in providing services based upon new technologies. Staff also proposed revisions to Section 16.2 and 16.3, which would address issues concerning back office access and the audit of back office systems, by deleting references to direct access and requiring Ameritech to share the results of any audit with a CLEC upon request.

Staff opposes the remaining objections of Ameritech. In terms of requiring the unbundling of lit fiber, Staff notes that this requirement was excised from the CLEC's proposal and is not contained in Staff's. Staff does not believe that Section 9.7 should be amended, due to current language that brings disputes under this provision to the

Commission for resolution. In terms of CBR rates above 96 kbps, Staff argues that the Texas arbitrators did not excuse SWBT from the obligation, but required SWBT to prove that, from a technical feasibility aspect, such requests cannot be provisioned. Finally, Staff notes that the record in the instant docket is muddled concerning the results of the previous OSS audit. To that end Staff suggests that, while the tariff need not reference an additional audit, the Commission may wish to modify the underlying order to require it.

Joint CLECs first note that Section 10 of Staff's proposed tariff requires access to lit subloops where a CLEC has collocated its DSLAM at a remote terminal, which the CLECs contend is a physical necessity to allow it to get its data traffic from the remote terminal to the central office. In terms of interoffice transport, the CLECs argue first that this tariff term simply codifies the manner in which Ameritech has constructed, tariffed and provisioned its Wholesale Broadband service. The CLECs further note that without a way to deliver data packets to CLEC networks, there is no possibility of line sharing because there would be no way to get the data packets to CLEC end-users.

Ameritech's Reply asserts the following: adoption of the terms of Staff's proposal would likely render the deployment of Project Pronto economically infeasible in Illinois; the tariff language was not introduced in the evidentiary portion of rehearing taking it without the record in this case; the fact that Texas arbitrators have come to various conclusions in a line-sharing arbitration there is immaterial to the Commission's determination here; Staff was unable to provide any distinction between Sections 9.5 and 9.7 that would call for considerations of economic infeasibility to be considered in one but not the other. Staff inappropriately relies upon the conclusions of the Texas arbitrators in including language that would require the provisioning of CBR in excess of 96 kbps; Staff has provided no reason to require a back office audit of OSS systems and references two new systems (PCAT and SMART) in support of its proposal that are, in the case of PCAT, not up and running in Illinois due to the suspension of Project Pronto or, in the case of SMART, is a SWBT, not an Ameritech system, which would make any audit meaningless in Illinois; the tariff should not contain prices, which should be filed in the first instance by Ameritech and subject to Commission suspension or investigation and, finally; while Staff agrees that interoffice transport was not an issue, the CLECs support their request for inclusion of this language by referencing the manner in which AADs will have service provisioned, which was never a matter of record here and is irrelevant to the provisioning of an end-to-end unbundled UNE Broadband Service.

D. Commission Analysis and Conclusion

The Commission has reviewed the evidence and arguments of the parties and has concluded that, while it unquestionably has the authority to and appropriately did, on the record before it in the original proceeding, order Ameritech to unbundle Project Pronto by providing requesting carriers access to the enumerated piece-parts of the

system referenced in that Order, that decision should now be modified. That said, We remain convinced that, unless and until requesting carriers have meaningful access to the Project Pronto architecture for the use of line cards that will provision the various types of services they wish to provide, they will indeed be impaired in providing those services. Further, we reiterate that all of the requisite circumstances set forth in Section 51.319 are present in Illinois. We reject Ameritech's notion that these situations must be viewed on an RT by RT basis, which would completely stymie, through protracted litigation and regulation, the use of the facilities by requesting carriers. We reiterate our earlier finding that Ameritech's proffered alternative methods of providing service are illusory.

SBC's Broadband service is not the answer, for a number of reasons. First and foremost, it establishes SBC as the gatekeeper of services that may be provided across Project Pronto by limiting the services to those it wishes to enable, a situation as far from competition as we can imagine. Second, the Broadband Service is subject to modification or withdrawal at Ameritech's whim, once the period associated with the merger commitments expires. Third, the Broadband Service is also subject to price and term manipulation, which, if recent news accounts of the behavior of other ILECs are true, would suggest that takers of such a service would do so at their own peril in terms of both price and service.

Ameritech's suggestion that CLEC's could participate in the broadband market through cable, satellite or wireless simply begs the question of its obligation to provide requesting carriers access to its network under relevant state and federal statutes and is rejected, as is Ameritech's doomsday "cost study," which the Commission finds was simply a teleological endeavor designed to produce the highest possible costs of compliance imaginable, untempered by anything remotely resembling a dose of reality.

DSLAM collocation fails again because of the same problems associated with lack of collocation space at RTs, timeliness and poor economics. The only "new" evidence the Commission finds persuasive on this issue cuts against Ameritech. Sprint's witness estimated, in un rebutted testimony, that each RT-DSLAM collocation would cost \$130,000. Given the projected 2100 Pronto RTs in Illinois, this option is simply not feasible. Thus, the impair standard is satisfied for each of the six UNEs described above.

Nonetheless, We are concerned that our prior order would, in all likelihood have delayed CLEC use of the various network elements as Ameritech, under the guise of making the network and OSS modifications necessary to support the delivery of elements, waited until a requesting CLEC brought an enforcement action compelling delivery. To that end, in this order on rehearing, We accept Staff's alternative proposal and order Ameritech to file, in Illinois, an interim tariff detailing an end-to-end HFPL UNE based upon the contract terms ordered by the arbitrators in Texas. We adopt, with ~~two~~ modifications, the proposed tariff attached to Staff's Reply to Briefs on Exception. The ~~two~~ modifications are as follows: First, Section 6.5.1 has been deleted

as it appears to be a legal conclusion rather than a tariff term. Second, the last sentence of the Section 18.5 has been modified to refer to the Commission's review of Ameritech's UNE prices generically, rather than referring specifically to a second phase of this docket, although that could indeed be the vehicle used to undertake such a review. These changes are made in response to arguments raised by the parties in Briefs on Exceptions and Replies. The following changes are made in response to the arguments made in the Surreply, Responses and Reply. The last sentence of Section 4.1 is deleted to address concerns over the unbundling of packet switching. Sections 5.5.1 and Section 8.7 are deleted to address concerns over interoffice transport. "Economic feasibility" language is added to Section 7.7.2, Section 9.5 and Section 9.7. Staff's proposed language to Section 16 is added to clarify OSS issues.

The authority to order the filing of an interim tariff is granted the Commission in Section 13-501(b) of the Telecommunications Act. The Commission has reviewed Staff's proposal as modified and finds the terms and conditions of service to be both just and reasonable. This solution moots all of Ameritech's arguments relating to the following issues: line card ownership; line card incompatibility; access to sub-loops; PVP exhaust and stranded capacity. In addition, the granting of Ameritech's Motion to File Instanter and considering all of the arguments raises therein, moots all due process complaints, since Ameritech has been provided a full and fair opportunity to voice its objections to the Staff proposal.

ISSUE III WHETHER PROJECT PRONTO NGDLC LINE CARDS MEET THE FEDERAL LEGAL STANDARDS FOR COLLOCATION.

As noted above, our adoption of Staff's alternative proposal moots issues related to the collocation of CLEC line cards.

ISSUE VI WHETHER UNBUNDLING PROJECT PRONTO DSL FACILITIES IS TECHNICALLY, PRACTICALLY, AND ECONOMICALLY FEASIBLE AND EFFICIENT.

This issue is also mooted by the requirement that Ameritech tariff the HFPL end to end UNE.

ISSUE VIII WHETHER SETTING THE MONTHLY RECURRING CHARGE FOR THE HFPL UNE AT \$0 IS UNLAWFUL.

A. Ameritech Illinois' Position

Ameritech Illinois proposes that the Commission set the monthly recurring price for the HFPL UNE at 50% of the Commission-approved monthly recurring price for unbundled loops (plus the incremental facilities and operations costs caused by sharing the loop). Ameritech Illinois supports this proposal as follows:

First, Ameritech Illinois argues that its proposed price is fully consistent with the FCC's TELRIC pricing principles. Under the FCC's TELRIC principles, the cost of a line-shared loop is a shared cost that must be allocated between the two services that cause that cost. Ameritech Illinois asserts that because there are two dedicated